

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

UNITED STATES OF AMERICA,

OPINION & ORDER

Plaintiff,

14-cr-5-wmc

v.

JOSEPH MANTHEI,

Defendant.

---

The court is in receipt of defendant Joseph Manthei's motion to adjourn his August 19th sentencing date in light of his recent arrest on a criminal complaint filed in the Eastern District of Michigan for possession with intent to distribute and distribution of controlled substance(s) in violation of 21 U.S.C. §§ 841(a) and 846. The motion will be denied for the reasons explained below.

Principally, the defendant argues that the new pending charges, which concern conduct that pre-dates his arrest and release on the one-count indictment for which he pled guilty in this court, will negatively impact any prison sentence he may be required to serve. In particular, purporting to rely on the advice of a United States Probation Officer, defendant's counsel contends that "the defendant is likely to serve his term in a maximum security facility only, ... will be ineligible for any programming, employment or other rehabilitative services and, of course, will be required to attend court in Detroit, Michigan at various times throughout his incarceration." (Dkt. #26.) As a result, defense counsel argues, imposing a sentence now will unfairly deny Manthei any

rehabilitative benefit of incarceration, as well as “unduly exacerbate the punishment component by incarcerating him” with hardened criminals he might not otherwise encounter. (*Id.*) The government responds that these effects are “only speculative,” and that in any event it is up to the Federal Bureau of Prisons “to determine designations and programming based on different factors.” (Dkt. #28.) The government also speculates that the defendant’s gun enhancement “may affect” his designation or services in any event.

Defense counsel also argues that if the court proceeds with sentencing now, it would be deprived of important information regarding defendant’s other criminal conduct, which is now the subject of the Eastern District of Michigan’s complaint. The government strongly disagrees that this is a basis for delay in sentencing. This latter argument is a curious one for a defendant to make, since there is no apparent upside in allowing the government more time to gather evidence of other crimes that might justify enhancing a sentence. In any event, the government essentially moots this issue in characterizing “[t]he new allegations” as “separate and distinct charges,” which “will be considered if and when the defendant is convicted and sentenced in the Eastern District of Michigan.” (*Id.*)

Finally, the government points out that the defendant’s motion is “essentially asking for an indefinite continuation” of sentencing in this district given that the Michigan case involves eight defendants and has no trial date. Given this court’s obligation to impose sentence “without unnecessary delay” under Fed. R. Crim. P. 32, the

government urges the court to proceed with sentencing as scheduled on August 19, 2014.

In light of all of these arguments, the court finds insufficient justification to delay the sentencing. As for defendant's principal concern, the court agrees that the negative impacts on defendant's term of incarceration are more probable than not, but just as this is a proper consideration for a delay in sentencing, it is something the court can appropriately consider in arriving at an appropriate period of incarceration, if any. Moreover, since the government agrees that any of the conduct that is charged in the complaint in the Eastern District of Michigan is separate and distinct from that charged here, the court will not consider it in sentencing on the one count indictment in this case.

This should actually inure to defendant's benefit at sentencing and, therefore, provides no reason to delay sentencing. On balance then, the likely burdens on defendant of proceeding with sentencing now seem to be offset by the possible likely benefits, and certainly do not overcome Rule 32's admonition to proceed without unnecessary delay.

Accordingly, IT IS ORDERED that defendant Joseph Manthei's motion to continue sentencing (dkt. #26) is DENIED.

Entered this 15th day of August, 2014.

BY THE COURT:

/s/

---

WILLIAM M. CONLEY  
District Judge